

# **PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION, CONFIDENTIAL AND OTHER SENSITIVE INFORMATION**

Reference: 42 USC 1320d, Public Law 104-191, Title II, Subtitle F, Administrative Simplification, Health Insurance Portability and Accountability Act of 1996  
Applicable federal and state regulations are referenced in the attached agreement

Protected health, confidential and sensitive information is information that is either protected by law or is of such personal or private nature that it is normally not treated as public record. The *Privacy and Security Agreement* at the end of the procedure briefly describes many of the major laws and regulations pertaining to confidential information.

The Cabinet for Health and Family Services, in each of its organizational sub-parts, and by each of its independent contractors, agents or employees, will act as a responsible steward of all information. The Cabinet will take reasonable precautions to insure the privacy and security of protected health, confidential and sensitive information. All medical information will be handled as required by the applicable Federal, State Laws and Regulations. Medical information will be collected, stored, used and shared only for the betterment of public or individual health, in support of the Cabinet's mission or as otherwise authorized by law.

Each individual, whether a state merit or non-merit employee, a volunteer, a co-op, an intern, a practicum student, a foster home parent, a respite provider, or a contracted entity and its employees shall give careful attention to safeguarding the confidentiality of protected health information and other protected sensitive information. Each individual or employee shall access or use only the amount of information necessary to accomplish the job task and strive at all times to protect the confidentiality, completeness, honesty and accuracy of that information.

No individual, employee or agent of the Cabinet for Health and Family Services will obtain, maintain, release, use, disclose or distribute any information in any form in violation of these laws and regulations. An individual, employee, or agent who does violate these standards may be subject to disciplinary action up to and including suspension or dismissal.

The *Privacy and Security Agreement* lists and briefly describes many of the major laws and regulations pertaining to confidential information. There is information not covered specifically by these laws that is also sensitive and must be safeguarded because of the potential for its misuse. Examples include but are not limited to the following: social security number, home address, home telephone number, date of birth, height, weight, race, gender, political affiliation, employment history and any other information of a purely personal nature. In addition, a department or office may also have additional requirements necessary to protect information relevant to that organizational unit's necessary functions.

## **RESPONSIBILITY**

An individual's responsibility extends to all situations where the individual is accessing, using, circulating, maintaining, disclosing and disposing of reports or documents that contain protected, confidential or sensitive information.

Specifically,

1. Individuals shall not release protected health, confidential and sensitive information to themselves or to other persons, entities or employees outside the scope of their duties.
2. Individuals shall not seek access to, or inquire about protected health, confidential or sensitive information in excess of the minimum necessary to efficiently discharge responsibilities within the scope of their duties.
3. Individuals shall familiarize themselves with the laws pertaining to confidential information described on the revised September 2004 Privacy and Security of Protected Health Information, Confidential and Sensitive Security Agreement in order to comply with those restrictions.
4. Individuals shall familiarize themselves with what types of information are considered protected health information, confidential, personal or other sensitive information and do their utmost to protect it. For an example, when documents or reports are circulated that contain such information, the sender will alert the receiver(s) to insure the confidentiality of the data.
5. Individuals shall not include protected health information, confidential, personal or other sensitive information on documents or reports if it is not necessary.
6. Individuals, when sending mail or other correspondence containing protected health information, confidential, personal or other sensitive information to any person, shall indicate "Personal and Confidential" on the envelope to insure that only the addressee opens it.
7. Individuals shall take reasonable and appropriate measures to protect identifying numbers. Of particular concern is the social security number and all individuals shall do their utmost to safeguard it.
8. When no specific guidance is provided regarding responding to requests for information and a written request for information is received, only Cabinet employees shall release the information and only after receiving the written authorization of the affected party.
9. When no specific guidance is provided regarding responding to an oral or unwritten request for information - where no written request for information is received - only Cabinet employees shall release the information, and only after verifying and documenting the authorization of the affected party.

10. Whenever reasonable and practical, restricted, protected, internal or privileged reports and documents shall be maintained in a secured container.
11. Individuals shall dispose of documents that contain protected health information, confidential, personal or other sensitive information correctly. The documents or reports shall be placed in a "shred" box that is removed from the work site and destroyed prior to disposal or recycling, rather than placing the documents in a regular solid waste or recycling receptacle.
12. Individuals shall not disclose protected health information, confidential, personal or other sensitive information even after their employment with the Cabinet ceases. State and Federal law regarding protected health information, confidential, personal or sensitive information also applies OUTSIDE the employment relationship and criminal or civil penalties including fines and imprisonment could apply.
13. Individuals shall be aware that disregard of the privacy and security of protected health information, confidential, personal or other sensitive information shall result in disciplinary action, up to and including dismissal. Additionally, individuals may subject themselves to civil and criminal liability for the disclosure of confidential information to unauthorized persons.

Cabinet for Health and Family Services

INDIVIDUAL PRIVACY AND SECURITY OF "PROTECTED HEALTH INFORMATION",  
CONFIDENTIAL AND OTHER SENSITIVE INFORMATION AGREEMENT

PLEASE PRINT:

\_\_\_\_\_

Last Name, First Name, & M.I.

\_\_\_\_\_

Social Security #

I understand that I may be allowed access to confidential information and/or records in order that I may perform specific duties on behalf of the Cabinet. I further understand and agree that I am not to disclose confidential information and/or records without the prior consent of the appropriate authority(ies) in the Cabinet for Health and Family Services.

I understand that accessing or releasing confidential information and/or records, or causing confidential information and/or records to be accessed or released, to myself, other individuals, clients, relatives, etc., outside the scope of my contractual or assigned duties constitutes a violation of this agreement and may result in disciplinary action taken against me, up to and including dismissal. I further understand that individuals may subject themselves to civil and criminal liability, as well as disciplinary action, for the disclosure of confidential information to unauthorized persons. I understand all data, information, documents, etc. belong to the Cabinet and I agree not to take any information in any form from the agency upon termination of my employment.

I understand that the following is not an exhaustive list of all applicable confidentiality statutes, but is an attempt to include most of the major examples of such confidentiality statutes. In the event of doubts about whether certain information is covered by confidentiality requirements, I understand that I should consult my supervisor or the Office of Legal Services.

Under **KRS 194A.060 and 194B060**, all records and reports of the Cabinet which directly or indirectly identify a patient or client, or former patient or client, of the Cabinet or the Cabinet by a former name (CHR, CHS, CFC) are confidential.

Under **KRS 209.140**, all information regarding an adult protective service investigation are confidential.

Under **KRS 216.530** all inspections of long-term care facilities shall be unannounced.

Under **HIPAA**, an individual's health care information must be used by the Cabinet and its employees and agents only for legitimate health purposes like treatment and payment. **45 C.F.R. § 160.101, and 160.103 et seq. and specifically §§ 164.500, 164.501,164,502(a), 164.514** established standards for privacy of health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Health information that must be kept private and secure is called Protected Health Information (PHI). HIPAA establishes in Federal Law the basic principle that an individual's medical records belong to that individual and, with certain exceptions, cannot be used, released or disclosed without the explicit permission of that individual or their legal guardian. This includes disclosing PHI in even casual or informal conversation not related to a legitimate health purpose (like treatment or payment) at any time whether at work or not. HIPAA gives consumers of Cabinet programs and services the right to an explanation of their privacy rights, the right to see their medical records (with some exceptions), the right to request corrections to these records, the right to control the release of information from their records and the right to documented explanations of disclosures by the Cabinet and by others who may have access to this information. Those who violate the rules laid down by HIPAA

are subject to federal penalties. For non-criminal **violations of the privacy standards, *including disclosures made in error***, there are civil monetary penalties of \$100 per violation up to \$25,000 per year, per standard. Criminal penalties are imposed for violations of the statute that are done knowingly (on purpose) — **up to \$50,000 and one year in prison for obtaining or disclosing protected health information; up to \$100,000 and up to five years in prison for obtaining or disclosing protected health information under “false pretenses;” and up to \$250,000 and up to 10 years in prison for obtaining protected health information with the intent to sell, transfer or use it for commercial advantage, personal gain or malicious harm.**

Under **KRS 214.420 and 214.625**, all information in the possession of local health departments or Cabinet concerning persons tested for, having, or suspected of having sexually transmitted diseases, or identified in an epidemiologic investigation for sexually transmitted diseases, is strictly confidential. A general authorization for the release of medical or other information is not sufficient to authorize release of this information. Breach of this confidentiality is considered a violation under KRS 214.990(6).

Under **KRS 214.181**, no test results relating to human immunodeficiency virus are to be disclosed to unauthorized persons.

Under **KRS 222.271**, treatment records of alcohol and drug abuse patients are confidential.

Under **KRS 216.2927**, raw data used by the Kentucky Health Policy Board are confidential. This includes data, data summaries, correspondence, or notes that could be used to identify an individual patient, member of the public, or employee of a health care provider.

Under **KRS 202A.091**, court records relating to hospitalization of the mentally ill are confidential. Violation of the confidentiality of these records is a Class B misdemeanor under KRS 202A.991.

Under **KRS 202B.180**, court records related to mental retardation admissions are confidential. Violation of the confidentiality of these records is a Class A misdemeanor under KRS 202B.990.

Under **KRS 210.235**, all records which directly or indirectly identify any patient, former patient, or person for whom hospitalization has been sought, are confidential.

Under **KRS 211.902**, the names of individuals are not to be disclosed in connection with lead poisoning records, except as determined necessary by the Cabinet Secretary.

Under **KRS 211.670**, lists maintained by hospitals, and all information collected and analyzed, relating to the Kentucky birth surveillance registry (concerning birth defects, stillbirths, and high risk conditions) are to be held confidential as to the identity of the patient. Violation of this confidentiality is a Class A misdemeanor under KRS 211.991.

Under **KRS 213.131**, unauthorized disclosure or inspection of vital records is unlawful. Violation of the confidentiality laws for vital statistics is a Class B misdemeanor under KRS 213.991.

Under **KRS 199.570**, all adoption files and records are confidential and are not open to any person or entity that does not meet the requirements of KRS 199.572, except upon order of the court that entered the judgment of adoption.

Under **KRS 205.175**, all public assistance communications, both written and oral, generated during the course of business are confidential and privileged. KRS 205.835 prohibits the unauthorized use of information by an employee.

Under **KRS 205.730(6)**, all child support parental locator information is confidential.

Under **KRS 205.735**, all child support information supplied by an employer is confidential.

Under **KRS 205.796**, no employee or agent of the Commonwealth shall divulge confidential child support records unless the disclosure is authorized in a manner prescribed by KRS 205.715 to KRS 208.800.

Under **KRS 434.850**, accessing any computer or computerized information without authorization, or causing any such access without authorization, is a Class A misdemeanor.

Under **KRS 610.340**, all juvenile court records are confidential and shall not be disclosed to unauthorized persons unless ordered by a court for good cause.

Under **KRS 620.050**, all child protective service investigative records are confidential and shall only be released in accordance with the provisions set forth in KRS 620.050.

Under **KRS 625.045**, any and all records in a voluntary termination action are confidential and shall only be open to inspection with a written order or as authorized by the provisions of KRS chapter 199.

Under **KRS 625.108**, any and all records in an involuntary termination action are confidential and shall only be open to inspection with a written order or as authorized by the provisions of KRS chapter 199.

Confidentiality of family planning services is required by **42 C.F.R. § 59. Section 59.11** states: *"All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and may not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals."* The confidentiality rules applicable to all programs or projects supported in whole or in part by federal financial assistance, whether by grant or by contract, are found at 42 C.F.R. § 50.310, which states: *"Information in the records or in the possession of programs or projects which is acquired in connection with the requirements of this subpart may not be disclosed in a form which permits the identification of an individual without the individual's consent except as may be necessary for the health of the individual or as may be necessary for the Secretary [of Health and Human Services] to monitor the activities of those programs or projects. In any event, any disclosure shall be subject to appropriate safeguards which minimize the likelihood of disclosures of personal information in an identifiable form."*

Under **42 C.F.R. § 431.305**, the following types of information relating to Medicaid applicants and recipients are confidential: *"(1) Names and addresses; (2) Medical services provided; (3) Social and economic conditions or circumstances; (4) Agency evaluation of personal information; (5) Medical data, including diagnosis and past history of disease or disability; and (6) Any information received for verifying income eligibility and amount of medical assistance payments (see Sec. 435.940ff). Income information received from SSA or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data. (7) Any information received in connection with the identification of legally liable third party resources under Sec. 433.138 of this chapter."*

Under **Internal Revenue Code (6103, 713, 7213A, 7431)** all federal tax information is confidential. Unauthorized disclosure or inspection of federal tax information is unlawful. Violation of the confidentiality laws for federal tax returns is a felony punishable by monetary fine (\$5000) and /or imprisonment (up to 5 years).

**I understand that other types of information may also be confidential by law, and that if in doubt as to confidentiality, I should not volunteer information before making certain that the information may be disclosed.**

**By affixing my signature to this document, I acknowledge that I have been apprised of the relevant laws, regulations, and policies concerning access, use, maintenance, and disclosure of confidential information and/or records which shall be made available to me through my employment in the Cabinet for Health and Family Services. I further agree that it is my responsibility to assure the confidentiality of all information that has been issued to me in confidence even after my employment with the agency has ended.**

**I have read the above, received a copy of the Cabinet's Confidentiality Policy and understand my responsibilities.**

\_\_\_\_\_  
Individual Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Worker Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date